HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.18998 of 1996

Between:

Tati Badraiah & others. …Petitioners.

AND

Mandal Revenue Officer, Burgampahad

& others. …Respondents.

:: O R D E R ::

Counsel for the Petitioners : Sri Peri Prabhakar

Counsel for Respondent Nos.1 & 2 : Government Pleader for

Revenue

Counsel for Respondent Nos.3 to 5 : None

Counsel for Respondent No.6 : Sri M.Rajamalla Reddy

14th JUNE 2006

This petition filed for restraining respondent Nos.1 and 2 from dispossessing the petitioners from their lands bearing Survey Nos.331/16/A, 335/A/3, 331/16/e, 335/A/2, 331/16/A and 335/A/1 measuring Ac.2.11 guntas situated in Sridhara Veluru village, Burgampahad Mandal, Khammam District can appropriately be

described as a frivolous piece of litigation which deserves to be dismissed with costs.

In the affidavit filed by him, petitioner No.1 - Tati Badraiah has averred that he belongs to tribal community; that he is an absolute owner and in peaceful enjoyment of the above described land; that the land is in possession of his family since time immemorial; that the land is situated in the agency area and it cannot be allotted to non-tribals. In paragraph 5, he has averred that at the instance of respondent Nos.3 to 6, respondent No.1 has threatened to dispossess him from the land in dispute. In paragraph 6, he has averred that respondent No.1 has not issued any notice to him and no action has been taken in accordance with law for dispossessing him.

In paragraphs 3, 4, 5, 6 and 7 of the counter filed by respondent No.3 - Jasta Venkateswara Rao, the following averments have been made:

> "3. It is submitted that the respondents 3 and 4 and 5 herein are no way connected to the lands referred to in the affidavit filed in support of the writ petition. In fact, the father of the respondents 3 and 4 herein purchased the lands in the year 1956 that is the lands to an extent of Ac.1.00 in S.No.241 and to an extent of Ac.1.00 in S.No.288 and since then the father of the respondents 3 and 4 herein and at present the respondents 3 and 4 herein are in continuous possession and enjoyment of the said lands without let or hindrance. Likewise, the 5th respondent has been in possession and enjoyment of the lands to an extent of Ac.1.09 guntas in S.No.235 and 331/29 right from the date of purchase of the same since long back. Even the said S.No.331 is mentioned in the affidavit of the above W.P., the sub-division number is different i.e., 331/16/A, whereas the 5th respondent's lands are situated in S.No.331/29 and 235. Hence, the 5th respondent is also no way connected with the lands referred to in the affidavit of the above W.P. Further, the issuance of pattadar pass book in favour of 5th respondent is pending consideration before the concerned authority.
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> 4. It is relevant to mention here that prior to the filing of the present writ petition, the petitioners filed a Case J.466/71 on the file of the Agency Divisional Officer, against the respondents 3 and 4 herein and the same was ordered in favour of the petitioners by order dated 18-12-1972. As against the said order dated 18-12-1972, the 4th respondent preferred an appeal before the appellate authority viz., Agent to the Government at Khammam and the appellate authority was pleased to set aside the order of Agency Divisional Officer, while allowing the appeal by order dated 26-12-1975 in C.M.A.No.56/1975, wherein it was categorically held that the possession of the respondents 3 and 4 dates back to 1963. The said order of the appellate authority has become final.

5. Likewise, the petitioners preferred a case against the 5th respondent in Case No.821/76 on the file of Agency Divisional Officer and on dismissal of the same, he preferred an appeal - C.M.A.No.2/76 which was also dismissed by order dated 31-12-1976. The same has become final.

6. It is also pertinent to mention here that pattadar pass book was also issued in favour of the 4th respondent herein vide Patta No.13 as early as in the year 1995 by the 1st respondent itself.

7. It is, therefore, clear that the petitioners have filed the above writ petition with regard to the lands which are no way connected to these respondents by unnecessarily showing the names of these respondents as respondents 3 to 5 even though these respondents are no way connected with the subject lands in the present writ petition."

In paragraph 3 of his counter, respondent No.6 - Talluri Venkata Rao has averred as under:

"3. I submit that my father Seshaiah purchased Acres 2.20 guntas of wet land and Acres 2.00 guntas of dry land in Sy.No.335/AA, Nadigudem at Sreedhara Velair H/o.Burgampahad Mandal, Khammam District from Tati Surappa, S/o.Singappa, father of petitioners under a Sale Deed dt.12-1-1962. Even since that date, my father and later I have been in possession and enjoyment of the same as owners in our own right our names are entered in pahanies and since that date we have been paying land revenue. I submit in the year 1976, proceedings were initiated by said Surappa against my father, Seshaiah under A.P. Scheduled Areas Land Transfer Regulation before Special Deputy Collector (TW) Paloncha. The Special Deputy Collector (TW) Paloncha by his order dt.4-10-1976 in Case No.271/76 held that said sale for Acres 4.20 guntas was accepted and the said sale protected. Again Surappa initiated proceedings under A.P. Scheduled Area Land Transfer Regulation against my father in 1985 before Special Deputy Collector (TW) Paloncha. The Special Deputy Collector (TW) Paloncha by his proceedings dt.28-8-1987 in Case No.22/BPD/85 dropped the proceedings. I am herewith filing a copy of the said proceedings and the same may be read as part of this affidavit."

The petitioners have neither filed rejoinder affidavit to controvert the contents of the counter affidavits filed on behalf of the private respondents nor any tangible evidence has been produced before the Court to show that respondent No.1 had threatened to dispossess them. Therefore, the assertion contained in the counter affidavit filed on behalf of the respondents that they are in no way interested in the land belonging to the petitioners will have to be treated as correct.

The petitioners have also not produced before the Court any tangible evidence to show that respondent No.1 had threatened to dispossess them at the instance of respondent Nos.3 to 6. Thus, there is no escape from the conclusion that they have invoked the jurisdiction of this Court under Article 226 of the Constitution without any tangible cause and the writ petition is liable to be dismissed. Ordered accordingly.

Since the petitioners have dragged the private respondents in litigation without any tangible reason and the latter have been put to costs in the form of fees of the Advocate and expenses, the petitioners are directed to pay costs of Rs.10,000/- (Rupees Ten Thousand only) to respondent No.6, who is today represented by an Advocate.

G.S. SINGHVI, C.J.

14th June, 2006.

ARS / svs